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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/010,468

11/08/2001

Marvin Lewis JR.

2124-026

4368

4678

7590

01/18/2007

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EXAMINER

STEELE, JENNIFER A

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/010,468

Applicant(s)

LEWIS, MARVIN

Examiner

Jennifer Steele

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **NONFINAL OFFICE ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 9/11/2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 and 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended claims 1 and 9 include the statement that the base and patterned layer are "formed at substantially the same time on the same knitting machine". The description does not teach the layer formation of the base and pattern layers but teaches a tape fabric produced on a conventional crochet-type warp knitting machine and the machine settings required produce the tape.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claim 1-7, 9-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Deignan and Gajjar (US 4,638,648) and Frenzel (US 4893482) and Spencer, Knitting Technology.

Deignan teaches a narrow tape or web that is a warp knit construction which anticipates the current application mattress closing tape of narrow –width textile fabric formed of a set of warp yarns. Deignan teaches front and back filling yarns (col 5, lines 3-16). Deignan teaches a narrow tape knitted on a conventional raschel crochet or knitting machine (col 6, lines 45-48). Deignan teaches a fabric web that is secured to upholstery along one edge by sewing (col 3, lines

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40-46). Deignan teaches front and back filling yarns, 34 and 36 where the front filling yarns cross a cord to form a pattern on the technical face of the fabric and the back filling yarns cross a cord to form a pattern on the technical back of the fabric. Deignan teaches 2 filling yarns where front and back filling yarns, 34 and 36, pass on opposite sides of a cord and the needle passes transversely across the entire web from side to side. Deignan differs from the current application and does not teach 4 fillings and does not teach multiple filling yarns. Deignan does not teach layers formed at the same time. Deignan does not teach a decorative diamond pattern instead teaches a pattern with utility to hold the cord.

Gajjar teaches a multi-layered warp knit fabric using a four bar stitch (four guide bars) and four filling yarns that are patterned to create two layers by placing each of the four yarns in patterns on one side or the other of the fabric. Gajjar teaches multiple filling threads where the filling threads are patterned to allow cotton blend threads (22) to the outer layer and polyester and nylon yarns (20,24) to the inner layer. Gajjar teaches a layered fabric where the technical back is not the same as the technical front. Gajjar's invention is produced on a knitting machine and the layers are produced at the same time.

Frenzel teaches a warp knit fabric strip of single or multiple layers with multiple filling threads where the filling weft threads zig-zag or traverse and extend from one edge of the fabric to the other (col 5 lines 44-55). Frenzel teaches that the weft threads are arranged in an oblique fashion to form a pattern.

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Spencer, Knitting Technology teaches that crochet knitting machines of the raschel type are capable of producing layered fabrics that are produced at the same time on the machine using more than 2 filling yarns (pgs 301). The machines are capable of producing a wide variety of patterns (pg. 310) that would include diamond pattern.

Deignan's teaches a narrow width crochet warp knit fabric with front and back patterns but does not teach more than 2 fillings or a layered fabric or a diamond pattern. Gajjar's teaches a double layer fabric with multiple filling yarns produced at the same time on a machine. Frenzel's teaches a layered, patterned warp knit fabric strip of multiple filling yarns and teaches traversing, zig-zagging, the weft yarns across the strip. Further, Spencer teaches that crochet type machines are capable of utilizing multiple filling yarns to produce two layer fabrics at the same time that have patterns. It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce a mattress closing tape motivated to produce a narrow width fabric strip on a crochet warp knitting machine that can produce double layers, use multiple filling yarns and a decorative pattern. It would have been obvious to one of ordinary skill in the art to produce a multilayer narrow-width fabric with multiple fillings, patterns and layers on a crochet warp knitting machine motivated to produce a mattress tape that is strong, decorative and can be produced on a machine.

***Response to Arguments***

4. Applicant's arguments filed 7/19/2006 have been fully considered but they are not persuasive. Applicant remarks that Deignan does not anticipate a fabric where the base fabric layer and pattern fabric layer extend substantially the full lengthwise and widthwise extent of the band and the layer are integrally-knitted together in overlying substantially coextensive relation to one another in fabric structure. Deignan teaches a narrow fabric, web, formed of warp knitting machine such as a Raschel machine. A warp knitting machine, specifically a Raschel machine is designed to place filling yarns across the entire width of the machine (fabric). Raschel machine are specifically suited for producing narrow width fabric strips for trimmings and for decorative and patterned lace. Rachel machines are also designed to produce layered fabrics integrally knitted together at the same time. (Spencer, Knitting Technology) Deignan utilizes the filling yarns to hold a cord. If the cord were not utilized, the filling yarns would cross the entire width of the fabric and generate a pattern and layer effect.

Applicant's arguments with respect to claim 2-7 and 10-15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

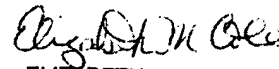
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Steele whose telephone number is

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(571) 272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
ELIZABETH M. COLE  
PRIMARY EXAMINER

0/5/2006